

REMARKS

Claims 24-31, 33-41 and 43-48 are pending in this application. With this Response, claim 24 has been amended. Claims 47 and 48 have been canceled. Upon entry of the current amendment, claims 24-31, 33-41 and 43-46 remain pending.

The amended claims set is provided herewith. No new matter has been added by this amendment.

Rejection Under 35 U.S.C. § 103 (a)

Claims 24-31, 33-41, and 43-46 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Amen, et al., U.S. Patent No. 4,851,239, in view of Norris, U.S. Patent No. 3,671,459 and Jackson, International Publication Number, WO 81/00061.

Applicants amend independent claim 24, thereby rendering the rejection of claims 24-31, 33-41, and 43-46 moot.

Claim 24 is reproduced as follows:

“A low density aerated milk composition which retains an aerated texture for an extended shelf life, comprising:

- D. about 85% to 95% of a milk ingredient;
 - E. about 2% to 10% of a pasteurized hydrated emulsifier blend comprising:
 - a. about 0.5% to 1.5% wetting agent;
 - b. about 7% to 15% lactylated mono- and di-glycerides; and
 - c. water; wherein the pasteurized hydrated emulsifier blend has a viscosity of about 5,000 cps. to 40,000 cps. at refrigeration temperatures, and
 - F. an aerating gas;
- wherein the aerated milk composition contained within a package has having within 24 to 48 hours a finished density of about 0.56 g/cc to 1.0 g/cc for up to 60 days at atmospheric pressure.”

Support for amendments to claim 24, can be found in Applicants' specification as originally filed at, e.g., page 6, line 26, page 12, lines 16-18, and page 13, lines 3-4.

Applicants submit that claim 24 is patentably distinct over the Amen, Norris, and Jackson references, alone or in combination.

The primary reference, Amen, relates to a shelf-stable aerosol dispensable yogurt product comprising from about 0.1% to about 1.0% stabilizer system comprising: . . . a) a microcrystalline cellulose . . . b) a carboxymethylcellulose . . . , and c) an amount of a hydrophilic gum, and emulsifying agents, see Amen et al. column 3, lines 50-55, and column 4, lines 21-25. However, Amen does not teach, motivate, or suggest the subject matter defined by claim 24, including the requirement of 2% to 10% of a pasteurized hydrated emulsifier. As, Amen goes on to state further in column 4, lines 25 – 32:

“The amount of such emulsifying agents, if employed, will, in general, be within the range customarily employed in aerosol dispensed foodstuffs (whipped cream and other dessert toppings, for example), i.e., from about 0.015% to about 0.045%, and preferably from about 0.025% to about 0.035% by weight, based on the total weight of the finished product.”

Applicants' respectfully assert that the Amen reference supports that it is non-obvious to place about 2% to about 10% of a hydrated emulsifier in a dairy composition, again the Amen reference states that emulsifying agents are generally in the range from about 0.015% to about 0.045% in aerosol dispensed foodstuffs. Furthermore, the present invention is not suitable for an aerosol dispenser as described in Amen et al., as the present invention comprising about 2% to about 10% of a pasteurized hydrated emulsifier would be in an aerated state within the aerosol dispenser of Amen and upon dispensing from the dispenser, the present invention

aerated structure would collapse, thereby producing an undesirable result. The Amen reference does not produce a "whipped foam" until dispensed from the pressurized dispenser and contains less than 1% of an emulsifying agent, resulting in a product that does not have the aerated stability of the present invention.

Furthermore, the references, whether alone or in combination, do not provide a reasonable expectation of success in producing "a low density aerated milk composition . . wherein the aerated milk composition contained within a package having within 24 to 48 hours a finished density of about 0.56 g/cc to 1.0 g/cc. Amen et al. does suggest that a whipped yogurt foam can be produced after the product as described in Amen has been dispensed from the aerosol container. However, there is no suggestion in the references, whether alone or in combination, that a whipped yogurt foam so produced in Amen et al. will have a density of about 0.56 g/cc to 1.0 g/cc within 24 to 48 hours of packaging.

The secondary reference, Norris fails to cure the deficiencies of the Amen reference. Norris does not teach, motivate, or suggest the subject matter defined by claim 24, including a) the requirement of a pasteurized hydrate emulsifier, b) an emulsifier having a viscosity of about 5,000 cps. to about 40,000 cps. at refrigeration temperatures, and c) a milk composition comprising about 2% to about 10% of a hydrated emulsifier.

The Norris emulsifier when combined with the milk composition of Amen fails to teach, motivate, or suggest the subject matter defined by claim 24 of the present invention. Norris in column 4, lines 3 – 5 describes the emulsifier as unpasteurized (e.g. temperature during agitation is 100°F), additionally the Norris emulsifier is described as a white semi-solid. The Norris cake batter example contains less than 1% of an emulsifier, see column 4, lines 7-20 of Norris. The present invention emulsifier is pasteurized having a viscosity of about 5,000 cps. to about 40,000 cps at refrigeration

temperatures and the food product of the present invention comprises about 2% to 10% of the hydrated emulsifier. Norris teaches away from an emulsifier having a viscosity of about 5,000 cps. to about 40,00 cps. at refrigeration temperatures. Amen and Norris teach away from a food composition comprising about 2% to 10% of a hydrated emulsifier.

The tertiary reference, Jackson, fails to cure the deficiencies of Amen and Norris, and has very similar deficiencies to that of the Norris reference. Jackson does not teach, motivate, or suggest the subject matter defined by claim 24, including a) the requirement of a pasteurized hydrate emulsifier, b) an emulsifier having a viscosity of about 5,000 cps. to about 40,000 cps. at refrigeration temperatures, and c) a milk composition comprising about 2% to about 10% of a hydrated emulsifier. In fact, Jackson teaches a powdered hydrated emulsifier, see page 2, line 35.

If the emulsifiers of Jackson or Norris were added to Amen, the resultant product would be undesirable due to the semi-solid and powdered physical state of the emulsifiers of the secondary and tertiary references. Additionally, were an unpastuerized emulsifier added to the present invention, an undesirable microbial safety issue would result. Again, none of the references teach a composition comprising about 2% to about 10% of a hydrated emulsifier. Applicants' respectfully assert that the references do not support combining or modifying the teachings of the references to produce the claimed invention, and when combined the references fail to produce the claimed invention.

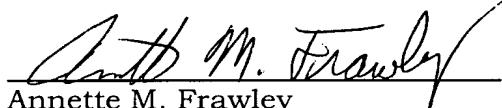
Accordingly, Applicants respectfully request that the rejection of claims 24-31, 33-41, and 43-46 under 35 U.S.C. § 103(a) as being unpatentable over Amen in view of Norris, and further in view of Jackson be withdrawn.

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Applicants respectfully request consideration and allowance of the claims as all rejections have been overcome. Early notice of allowability is kindly requested. Please contact the undersigned if it will assist in expediting prosecution of these claims.

Please apply any charges or refunds to Deposit Account No. 07-0900 and provide notification of such transaction(s) to the address below.

Respectfully submitted,


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